Remarks

As a preliminary matter, there appears to be some confusion as to the number and identity of the claims pending. The above-referenced application, as filed, contained 41 claims. Applicant believes that Group I was to include claims 1-40, which are currently being prosecuted, and that Group II was to include claim 41, which has been withdrawn. A correction of the record is respectfully requested.

Claims 1, 36, 38 and 40 have been amended to further describe the inherent nature of the presence of the superabsorbent polymer formed in situ in the nonwoven web impregnated with the superabsorbent polymer. Claims 1, 36, 38 and 40 have not been amended for reasons related to patentability. Support for the amendment to claims 1, 36, 38 and 40 can be found in general throughout Applicant's Specification, and in particular, for example, at page 5, lines 5-6

Claims 1-10, 18-20, 26-30, 32-34, 36, 37 and 40 stand rejected under 35 U.S.C. § 102(b) over Chmielewski U.S. 6,068,620 (the '620 patent).

The '620 patent discloses a disposable absorbent article that includes an absorbent core that includes a laminate of three layers in which the central fibrous layer includes superabsorbent polymer. The central fibrous layer includes an absorbent layer of fluff pulp or cellulose acetate and superabsorbent polymer.

Claim 1 is directed to a disposable diaper having a core that includes a composite that includes superabsorbent polymer and a high loft nonwoven web impregnated with the superabsorbent polymer, the superabsorbent polymer having been formed in situ. The composite includes from 10 % by weight to about 90 % by weight superabsorbent polymer. The '620 patent does not teach a core that includes a nonwoven web that includes superabsorbent polymer. The '620 patent also does not teach a nonwoven web impregnated with superabsorbent polymer formed in situ. The only component of the diaper of the '620 patent that includes superabsorbent polymer is a fluff pulp or cellulose acetate absorbent layer 340a. The '620 patent does not teach or suggest that the fluff pulp or cellulose acetate absorbent layer of the '620 patent is a high loft nonwoven web. For this reason alone, the '620 patent fails to teach each and every element of the diaper of claim 1. Accordingly, the rejection of claim 1 under 35 U.S.C. § 102(b) over the '620 patent is unwarranted and must be withdrawn.

The '620 patent is further deficient for at least the following additional reasons.

The language of claim 1 stating "said superabsorbent polymer having been formed in situ," is a structural limitation. By way of background, it is axiomatic that a superabsorbent polymer formed in situ does not exist until it is formed. Superabsorbent polymer can be formed from an aqueous composition that includes a polymer that crosslinks to form the superabsorbent polymer (page 6, lines 21-24). Prior to crosslinking the polymer is not superabsorbent. When a superabsorbent polymer is formed *in situ* in a nonwoven web, the superabsorbent polymer forms as a coating along the length of the fibers of the nonwoven web and forms bridges that span the distance between adjacent fibers (i.e., the interstices of the nonwoven web). The superabsorbent polymer thus is present throughout the three dimensional matrix of the nonwoven web with which it is in contact. Therefore the language "a superabsorbent polymer formed *in situ*" is a structural limitation that indicates the nature of the physical presence of the superabsorbent polymer in the nonwoven web.

The '620 patent does not teach forming the superabsorbent polymer in situ. The '620 patent discloses that superabsorbent materials are available in the form of granules, beads, fibers, bits of film, and globules (see, the '620 patent, col. 1, lines 20-21). The '620 patent further discloses adding existing superabsorbent polymer to the absorbent layer 340a. The '620 patent describes two methods of incorporating superabsorbent polymer into their absorbent article. One method is a dry method in which superabsorbent particles are added to fibers as depicted in Figure 7 of the '620 patent. The other method is a wet laid method in which a solvent/water-based suspension of fibers, particulate and superabsorbent polymer is wet laid onto a felt or wire mesh and water is driven off as depicted in Figure 6 of the '620 patent. In each of these methods the superabsorbent polymer exists (e.g., as particles) prior to being incorporated into the fluff pulp of the absorbent layer. Therefore, the '620 patent does not teach a superabsorbent polymer formed in situ –let alone a high loft nonwoven web impregnated with a superabsorbent polymer formed in situ. Accordingly, the '620 patent fails to teach each and every element of the diaper of claim 1. Applicant submits, therefore, that the rejection of claim 1 under 35 U.S.C. § 102(b) over the '620 patent is unwarranted and requests that it be withdrawn.

Claims 2-10, 18-20, 26-30, 32-34, 36, 37 and 40 are distinguishable under 35 U.S.C. § 102(b) over the '620 patent for at least the same reasons set forth above in distinguishing claim 1.

Claims 11-17, 21-25, 31, and 38 stand rejected under 35 U.S.C. § 103 over the '620 patent.

Claim 11 depends from claim 1 and further requires that the nonwoven web have a density less than 0.01 g/cm^3. To establish a case of *prima facie* obviousness there must be a showing of a suggestion or motivation to modify the teachings of that reference to the claimed invention. M.P.E.P. 2143; *B.F. Goodrich Co. v. Aircraft Braking Sys. Corp.*, 72 F.3d 1577, 1582, 37 U.S.P.Q.2d 1314, 1318 (Fed. Cir. 1996). In addition, to establish a *prima facie* case of obviousness all of the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.d2 981 (CCPA 1974). "In determining the propriety of the Patent Office case for obviousness in the first instance it is necessary to ascertain whether or not the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the reference before him to make the proposed substitution, combination or other modification." MPEP 2143.01; *In re Linter*, 45 8 F.2d 1013, 1016 (CCPA 1972). The '620 patent does not teach or suggest each and every limitation of claim 11. In particular, the '620 patent does not teach or suggest a core that includes a high loft nonwoven web impregnated with superabsorbent polymer --let alone a high loft nonwoven web having a density less than 0.01 g/cm^3 impregnated with superabsorbent polymer formed in situ. The only component of the '620 patent that includes superabsorbent polymer is the absorbent layer, which is made from fluff pulp or cellulose acetate. The '620 patent does not teach or suggest that the absorbent layer is a high loft nonwoven web. None of the methods disclosed in the '620 patent for making the laminate 340 inherently produce a high loft nonwoven web. Therefore the '620 patent fails to teach a required element of claim 11, i.e., a high loft nonwoven web. In addition, the '620 patent does not teach or suggest a high loft nonwoven web impregnated with a superabsorbent polymer –let alone impregnated with a superabsorbent polymer formed in situ. Thus, a *prima facie* case of obviousness of claim 11 has not been established. Accordingly, the rejection of claim 11 under 35 U.S.C. § 103 over the '620 patent cannot stand and must be withdrawn. Should this rejection be

maintained, Applicant respectfully requests that the next Office action identify the location in the '620 patent, by reference to column and line number, of a teaching or a suggestion of a high loft nonwoven web, a high loft nonwoven web impregnated with a superabsorbent polymer, and a high loft nonwoven web impregnated with a superabsorbent polymer formed in situ.

Claims 12-17, 21-25, 31 and 38 are distinguishable under 35 U.S.C. § 103 over the '620 patent for at least the same reasons set forth above in distinguishing claim 11.

Claim 35 stands rejected under 35 U.S.C. § 103 over the '620 patent in view of U.S. Patent No. 5,788,684 (the '684 patent).

The '684 patent describes a liquid absorbing article that includes holes that extend through the depth of the absorbent core. The holes are at least partially filled with a high absorbency material.

Claim 35 depends from claim 1 and further recites that the core includes a plurality of strips of the composite. The deficiencies of the '620 patent set forth above are incorporated herein. The '684 patent does not cure the deficiencies of the '620 patent. The '684 patent does not teach or suggest a high loft nonwoven web impregnated with a superabsorbent polymer formed in situ. Thus, a *prima facie* case of obviousness of claim 35 has not been made. Accordingly, Applicant submits that the rejection of claim 35 under 35 U.S.C. § 103 over the '620 patent in view of the '684 patent is unwarranted and must be withdrawn.

There being no outstanding rejection of claim 39, Applicant submits that claim 39 is in condition for allowance and respectfully requests an indication as to the same.

The claims now pending in the application are in condition for allowance and such action is respectfully requested. The Examiner is invited to telephone the undersigned should a teleconference interview facilitate prosecution of this application.

Please charge any additional fees owing or credit any over payments made to Deposit Account No. 06-2241.

Respectfully submitted,

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